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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/865,962	05/30/1997	JAKOB NIELSEN	2860-058	9129

22852 7590 11/17/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP  
1300 I STREET, NW  
WASHINGTON, DC 20005

EXAMINER
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EDELMAN, BRADLEY E

ART UNIT	PAPER NUMBER
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2153

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DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PRE

<b>Advisory Action</b>	<b>Application No.</b> 08/865,962	<b>Applicant(s)</b> NIELSEN, JAKOB	
	<b>Examiner</b> Bradley Edelman	<b>Art Unit</b> 2153	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: it is not persuasive. See attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 40,41,43-47 and 53-58.

Claim(s) withdrawn from consideration: 48-52, 59-65.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
GLENON B. BURGESS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

### **RESPONSE TO ARGUMENTS**

In response to Applicant's request for reconsideration filed on October 31, 2003, the following factual arguments are noted:

- a. Dan does not teach that the bandwidth assigned to users connected to the server over the communications interface is reallocated.
- b. Hou does not overcome Dan's deficiencies because Hou does not teach that the bandwidth assigned to users is reallocated.

In considering (a), Examiner agrees that Dan does not teach that the bandwidth assigned to users connected to the server over the communications interface is reallocated. However, Examiner did not reject the claims over Dan alone, and Examiner has already addressed the fact that Dan does not disclose reallocating bandwidth assigned to users in the 35 USC 103(a) rejection of July 24, 2003. Thus, Applicant's argument regarding the Dan reference is moot.

In considering (b), Applicant contends that Hou does not overcome Dan's deficiencies because Hou does not teach that the bandwidth assigned to users is reallocated. Examiner respectfully disagrees. In col. 2, lines 46-51, Hou states, "users who pay an additional fee may be granted various benefits, including priority access to unallocated bandwidth and/or a higher maximum (e.g., ceiling) bandwidth allocation." This clearly shows that the system taught by Hou is allocating bandwidth to users. Applicant also argues that the bandwidth in Hou is assigned to subscriber units, and not

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users. However, this argument is in clear contradiction to the statement discussed above.

Hou does teach allocating bandwidth to subscriber units, however, such allocation is merely a conduit towards allocating bandwidth to the users themselves. Note that the units are *subscriber* units – i.e. units used by subscribers. Thus, allocating the bandwidth to the subscriber units, necessarily allocates bandwidth to the *subscribers* – i.e. users – of those units. See also, Abstract (“a subscriber unit hierarchy may be used to grant priority to selected users”); col. 1, lines 56-59 (“the central controller should have the capability to provide a minimum bandwidth to each subscriber, and to distribute bandwidth among users in an equitable manner”). Various other sections in the specification of Hou describe allocating the bandwidth to users. Thus, the claims remain rejected by Dan, in view of Hou.

### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 10:30 AM to 7:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

For all correspondences: (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

BE  
November 14, 2003